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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 WILLIS LAMAR RIDGEWAY, on behalf of
13 themselves and all others similarly situated,

14 Plaintiff,

15 v.

16 SPOKEO, Inc.,

17 Defendant.

18 Case No.: 2:23-cv-01660-MEMF-AS

19 **ORDER GRANTING DEFENDANT
SPOKEO, INC.'S MOTION TO DISMISS
AND GRANTING PLAINTIFF
RIDGEWAY'S REQUEST FOR LEAVE TO
AMEND [ECF NOS. 23, 34]**

20
21 Before the Court is the Motion to Dismiss filed by Defendant Spokeo, Inc. (ECF No. 23) and
22 Plaintiff Willis Lamar Ridgeway's Response to the Court's Order to Show Cause on Subject Matter
23 Jurisdiction (ECF No. 34). For the reasons stated herein, the Court hereby GRANTS the Motion to
24 Dismiss and GRANTS Ridgeway leave to amend.
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1 **I. Background**

2 **A. Factual Background¹**

3 Defendant Spokeo, Inc. (“Spokeo”) operates a people search engine, spokeo.com, which
 4 offers to display detailed reports about individuals to any user who pays a monthly subscription fee.
 5 Compl. ¶ 2. Spokeo compiles information from thousands of data sources and uses it to create
 6 profiles on Alabama residents which it hosts on its database. *Id.* ¶ 3. A user of Spokeo’s site can
 7 subscribe to its database by paying a monthly fee of \$24.95, which grants the subscriber unlimited
 8 access to detailed records pertaining to any individual for which Spokeo has information. *Id.* ¶ 4.

9 When a user of the site who is not a subscriber searches for an individual on the site, Spokeo
 10 generates and then presents to the user a “teaser report” containing limited information about the
 11 individual, and—adjacent to the teaser—offers to provide access to the full database in exchange for
 12 the purchase of a monthly subscription.² *Id.* ¶¶ 6–9. Spokeo does not use the teaser report to sell a
 13 full report on the searched individual, but to sell a subscription to its database services. *Id.* ¶ 9.

14 Plaintiff Willis Lamar Ridgeway (“Ridgeway”) is an Alabama resident who never consented
 15 to Spokeo’s use of any indicia of his identity. *Id.* ¶ 11, 14. Ridgeway brings this lawsuit on behalf of
 16 himself and “all Alabama residents whose indicia of identity was published by Spokeo without their
 17 consent.” *Id.* ¶ 53.

18 **B. Procedural History**

19 On March 6, 2023, Ridgeway filed the Complaint in this Court as a class action against
 20 Spokeo “for violating the rights of Alabama citizens by using their names, signatures, photographs,
 21 images, likenesses, voices, and or similar imitations of those attributes *for the commercial purpose*
 22 *of advertising subscriptions to Defendant’s database services* without obtaining consent from
 23 Plaintiff or the putative class.” *Id.* ¶ 1 (emphasis added). The Complaint asserts two causes of action:

25 ¹All facts stated herein are taken from the allegations in Plaintiff’s Complaint unless otherwise indicated. ECF
 26 No. 1 (“Compl.”). For the purposes of this Motion, the Court treats these factual allegations as true, but at this
 27 stage of the litigation, the Court makes no finding on the truth of these allegations and is therefore not—at this
 28 stage—finding that they *are* true.

2 ² At the hearing on this matter, the parties made clear that the teaser report is *generated* upon a search for a name.

1 (1) for violation of Alabama Code 1975 § 6-5-772, otherwise known as Alabama’s Right of
 2 Publicity Act (“AROPA”); and (2) unjust enrichment.

3 On May 12, 2023, Spokeo filed this Motion to Dismiss (the “Motion”). ECF No. 23
 4 (“Mot.”). On June 2, 2023, Ridgeway filed his opposition to the Motion. ECF No. 29 (“Opp.”). On
 5 June 16, 2023, Spokeo filed its reply. ECF No. 30 (“Reply”). On July 26, 2023, Spokeo filed a
 6 notice of supplemental authority in support of its Motion. ECF No. 32. On August 7, 2023,
 7 Ridgeway filed an opposition to Spokeo’s notice. ECF No. 33. On September 25, 2023, despite its
 8 opposition to Spokeo’s, Ridgeway filed his own notice of supplemental authority. ECF No. 38.

9 On July 26, 2023, this Court issued an order to show cause as to why the action should not be
 10 dismissed for lack of subject matter jurisdiction on the basis that Ridgeway’s Complaint did not
 11 appear to meet the class size nor amount-in-controversy requirements to establish jurisdiction for a
 12 class action lawsuit. ECF No. 31 (“OSC”). On August 9, 2023, Ridgeway responded to the Court’s
 13 OSC arguing that the Complaint satisfied the Class Action Fairness Act (“CAFA”) and was
 14 sufficient to establish subject matter jurisdiction, but alternatively requested leave to amend his
 15 Complaint. ECF No. 34 (“OSC Response”). On August 16, 2023, Spokeo filed a reply to
 16 Ridgeway’s OSC Response. ECF No. 35. On August 28, 2023, Ridgeway filed a response replying
 17 to Spokeo’s reply. ECF No. 37.

18 The two matters were heard before the Court on September 28, 2023.

19 II. Applicable Law

20 Spokeo brings its Motion under Federal Rules of Civil Procedure 12(b)(1) for lack of
 21 standing and 12(b)(6) for failure to state a claim.

22 A. Rule 12(b)(1): Lack of Subject Matter Jurisdiction

23 “Federal courts are courts of limited jurisdiction,” and can only hear cases where there is a
 24 valid basis for federal jurisdiction. *Richardson v. United States*, 943 F.2d 1107, 1112 (9th Cir. 1991).
 25 Federal Rule of Civil Procedure 12(b)(1) (“Rule 12(b)(1)”) authorizes a party to seek dismissal of an
 26 action for lack of subject-matter jurisdiction. *See Fed. R. Civ. P. 12(b)(1)*. In the context of a
 27 12(b)(1) motion, the plaintiff bears the burden of establishing subject matter jurisdiction. *Chandler v.*
 28 *State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010).

1 **i. Standing**

2 Federal subject matter jurisdiction requires that the plaintiff have standing. A plaintiff will
 3 lack standing unless the plaintiff: “(1) suffered an injury in fact, (2) that is fairly traceable to the
 4 challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial
 5 decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

6 To establish an injury in fact, a plaintiff must have a “personal stake” in the matter. *Lujan v.*
 7 *Defenders of Wildlife*, 504 U.S. 555, 560 (1992). At an “irreducible minimum, the plaintiff must
 8 show that they personally suffered actual or threatened injury as a result of the defendant’s conduct.”
 9 *Id.* An alleged statutory violation is insufficient to confer standing on its own. *See TransUnion LLC*
 10 *v. Ramirez*, 141 S. Ct. 2190, 2204 (2021) (rejecting the proposition that “a plaintiff automatically
 11 satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and
 12 purports to authorize that person to sue to vindicate that right”). Rather, “courts should assess
 13 whether the alleged injury to the plaintiff has a ‘close relationship’ to a harm ‘traditionally’
 14 recognized as providing a basis for a lawsuit in American courts.” *Id.* “That inquiry asks whether
 15 plaintiffs have identified a close historical or common-law analogue for their asserted injury.” *Id.*
 16 (identifying intangible harms to include reputational harms, disclosure of private information, and
 17 intrusion upon seclusion).

18 “Because standing and ripeness pertain to federal courts’ subject matter jurisdiction, they are
 19 properly raised in a Rule 12(b)(1) motion to dismiss.” *Chandler*, 598 F.3d at 1122. In the context of
 20 a 12(b)(1) motion, the plaintiff bears the burden of establishing Article III standing to assert the
 21 claims. *Id.*

22 **ii. The Class Action Fairness Act**

23 Once standing has been established, a plaintiff must assert a possible basis for jurisdiction.
 24 The only basis relevant to this matter is jurisdiction under the Class Action Fairness Act (“CAFA”)
 25 pursuant to 28 U.S.C. § 1332(d). In order for the Court to have subject matter jurisdiction under
 26 CAFA, there must be: (1) minimal diversity, which is met when any member of the class is a citizen
 27 of a different state than any defendant; (2) 100 or more putative class members; and (3) more than \$5
 28 million in controversy. *See Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1195 (9th Cir.

1 2015). In determining the amount in controversy, the Court must first look to the complaint, and “the
 2 sum claimed by the plaintiff controls if the claim is apparently made in good faith.” *Id.* at 1197
 3 (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283 (1938)). If the amount in
 4 controversy is in dispute, “CAFA’s requirements are to be tested by consideration of real evidence
 5 and the reality of what is at stake in the litigation, using reasonable assumptions underlying the
 6 defendant’s theory of damages exposure.” *Id.* at 1198.

7 **B. Leave to Amend**

8 As a general rule, leave to amend a dismissed complaint should be freely granted unless it is
 9 clear the complaint could not be saved by any amendment. Fed. R. Civ. P. 15(a); *Manzarek v. St.*
 10 *Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

11 **III. Discussion**

12 Spokeo sets forth three main arguments on its Motion: (1) Ridgeway lacks standing, (2)
 13 Ridgeway’s claims are deficient, and (3) Ridgeway’s claims are barred by federal law. *See generally*
 14 Motion. The Court has also independently raised an additional issue not raised in Spokeo’s
 15 Motion—namely, the issue of whether Ridgeway has satisfied the CAFA requirements to establish
 16 subject matter jurisdiction. ECF No. 31.

17 The primary dispute between the parties at this stage—with respect to standing and subject
 18 matter jurisdiction—is whether Ridgeway must allege that anyone searched for or viewed his teaser
 19 report in order for the Complaint to survive. For the reasons explained below, the Court finds that
 20 the answer to this question is yes. Accordingly, the Court finds that Ridgeway has not alleged
 21 sufficient facts to confer standing or subject matter jurisdiction. However, given that there is a
 22 possibility for Ridgeway to cure the deficiencies in the Complaint, the Court will grant Ridgeway
 23 leave to amend.

24 **A. Ridgeway’s Allegations**

25 Ridgeway alleges that Spokeo violated Alabama’s Right of Publicity Act (“AROPA”) and
 26 was unjustly enriched in doing so. The text of AROPA reads as follows:

27 Except as otherwise provided in this article, any person or entity who *uses* or *causes*
 28 *the use of* the indicia of identity of a person, on or in products, goods, merchandise, or
 services entered into commerce in this state, or *for purposes of advertising* or selling,

1 or soliciting purchases of, products, goods, merchandise, or services, or for purposes
 2 of fund-raising or solicitation of donations, or for false endorsement, without consent
 3 shall be liable under this article to that person, or to a holder of that person's rights.

4 Code of Ala. § 6-5-772 (emphasis added). At the hearing on this matter, counsel for Ridgeway
 5 confirmed that Ridgeway's claim is based solely on Spokeo's alleged "use" of his information in the
 6 teaser report "for purposes of advertising," not any of the other potential uses set forth in the statute.
 According to Ridgeway,

7 Spokeo's website design operates in such a manner that violates the right of publicity
 8 of Plaintiff and other Alabama citizens because *it displays indicia of their identities adjacent to an offer to provide access to its database in exchange for payment of a monthly subscription fee (and, in fact, Spokeo displays indicia of Plaintiff's identity to persuade the user to purchase a subscription).*

9
 10 Compl. ¶ 34 (emphasis added). In addition, he alleges:

11
 12 Defendant *used* Plaintiff's name, image, and likeness *to advertise* its products – *teasing potential subscribers with Plaintiff's indicia of identity to pique the interest of potential subscribers* as it relates to the information they could obtain by subscribing to
 13 Defendant's database.

14 Compl. ¶ 44 (emphasis added).

15 **B. Ridgeway Has Not Established Standing**

16 Spokeo makes two main contentions with respect to standing, namely that Ridgeway has
 17 failed to set forth allegations sufficient to establish standing because, *first*, he has not alleged that
 18 anyone actually searched for or viewed his teaser report, and, *second*, even if he had, he has not
 19 alleged any concrete injury. Mot. at 4, 6. Both of these contentions go towards the first requirement
 20 of Article III standing—whether Ridgeway has suffered an injury in fact. Ridgeway contends that it
 21 is not necessary to allege that anyone searched for or viewed his teaser report in order for him to
 22 show standing and it is not necessary that anyone actually did search for or view his teaser report in
 23 order for him to recover. The Court finds that Ridgeway has not sufficiently pleaded an injury in fact
 24 to confer Article III standing because he has not alleged that anyone actually searched for or viewed
 25 his teaser report. The Court therefore need not reach the question of whether—had he alleged that
 26 anyone searched for or viewed his teaser report—this would constitute a *concrete* injury.

27 Ridgeway argues that he has properly pleaded an injury in fact—namely, the violation of
 28 AROPA as well as various economic injuries from the use of his indicia of identity. Opp. at 4. As set

forth in the Complaint, Ridgeway alleges that Spokeo injured Ridgeway “by taking and misappropriating his indicia of identity without obtaining his consent to use his likeness for a commercial purpose.” Compl. ¶ 51. But this is merely a restatement of the AROPA statute itself. *See Ala. Code 1975 § 6-5-772.* The Supreme Court has already held that merely pleading a statutory violation is not enough—on its own—to plead an *injury* and therefore establish standing. *See TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2204 (2021) (rejecting the proposition that “a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right”).

Here, the forms of injury Ridgeway points to are conjectural and hypothetical. *See Lujan*, 504 U.S. at 560 (explaining that an injury in fact requires injury that is “actual or imminent, not ‘conjectural or hypothetical’”). The fact that Ridgeway’s teaser report may have been available or accessible, standing alone, does not lead to any actual or imminent harm. Ridgeway makes the conclusory assertion that Spokeo “**used** [his] name, image, and likeness to advertise its products—teasing potential subscribers with Plaintiff’s indicia of identity to pique the interest of potential subscribers as it relates to the information they could obtain by subscribing to [Spokeo’s] database.” Compl. ¶ 44 (emphasis added). But he fails to assert that this actually happened—namely that anyone searched for or viewed his teaser report and was therefore “teased with his identity.” To the contrary, Ridgeway’s position is that he does not need to so allege. *See Opp.* at 7.

The plain meaning of the word “use” is to put to use as a resource or to employ for the accomplishment of a purpose.³ Ridgeway has not pointed this Court to any authority that supports

³ Dictionary.com defines the verb use as “to employ for some purpose; put into service; make use of . . . to avail oneself of; apply to one’s own purposes.” *Use*, DICTIONARY.COM, <https://perma.cc/HR8U-8CT8> (last visited Sept. 27, 2023).

Similarly, Black’s Law Dictionary defines “use” as follows:

- 25 1. *To employ for the accomplishment of a purpose; to avail oneself of <they use formbooks>.* 2. To put into practice or employ habitually or as a usual way of doing something; to follow as a regular custom <to use diligence in research>. 3. To do something customarily or habitually; to be wont or accustomed <I used to avoid public speaking, but no longer>. 4. *Archaic.* To conduct oneself toward; to treat <he uses me well>. 5. To make familiar by habit or practice; to habituate or inure <she is used to the pressure>. 6. To take

1 the notion that one could be liable for a hypothetical “advertisement” that no third party ever sees.⁴
 2 At oral argument, Ridgeway argued that for harm caused by advertisements on a billboard or put in a
 3 news stand, a party does not have to necessarily allege that such advertisements were seen, as it is
 4 assumed. However, the Court finds the advertisement here more akin to a flyer that is only handed
 5 out to people who attend a specific event. There can be no injury if there is no allegation that anyone
 6 attended the event, and therefore no flyers were handed out.

7 Ridgeway relies heavily on the definition of “published” employed by the Ninth Circuit in
 8 *Oja v. United States Army Corps of Eng’rs*, 440 F.3d 1122 (9th Cir. 2006):

9 Internet publication is a form of “aggregate communication” in that it is intended for a
 10 broad, public audience, similar to print media. In both print and Internet publishing,
 11 information is generally considered “published” when it is made available to the public.
 12 Once information has been published on a website or print media, there is no further
 13 act required by the publisher to make the information available to the public.

14 *Oja*, 440 F.3d at 1131. According to Ridgeway, it is therefore appropriate to consider the teaser
 15 report “published” and his personal information “used” in the meaning of the statute, because there
 16 is no “additional act” needed by Spokeo to make the teaser report available to a user who searches
 17 for an individual name. But even to the extent that this definition of “published” is controlling, the
 18 teaser report is still not “published” until a user searches for an individual. The parties themselves
 19 agreed that the teaser profile *does not even exist* until someone searches for a given individual—at
 20

21 (an amount of something) from a supply <the firm uses 50 reams of paper each day>. **7.**
 22 To take advantage of (someone) for selfish purposes; to make (a person) an involuntary
 23 means to one’s own ends <he uses his interns for personal errands>. **8.** To take usu.
 24 improper advantage of (a situation, position, etc.) <she uses her board membership to
 threaten staffers>. **9.** To regularly take; to partake of (drugs, tobacco, etc.) <he uses
 heroin>.

25 *Use*, BLACK’S LAW DICTIONARY (11th ed. 2019) (emphasis added).

26 ⁴ The Court also notes that AROPA is Alabama’s “Right of Publicity Act,” and the right of publicity typically
 27 requires use in the nature of some form of publication. See STUART M. SPEISER ET AL., 9 AMERICAN LAW OF
 TORTS § 30:39 (explaining that the right of publicity was first recognized in a case where the court found that
 28 “a man has a right in the publicity value of his photograph, i.e., the right to grant the exclusive privilege of
 publishing his picture”) (emphasis added).

1 which point it is generated and presented.⁵ It does not merely sit on the internet as a webpage
 2 waiting to be accessed, but requires someone specifically interested in Ridgeway's information to
 3 seek it and Spokeo to respond to that request by generating and presenting the teaser report. This is
 4 what differentiates it from other information "published" on the internet. Accordingly, the Court
 5 finds that an allegation that someone did search for Ridgeway's information and generate a
 6 corresponding teaser report would be required to have his identity be considered "used," which is in
 7 turn necessary for resulting injury. Spokeo could not have caused Ridgeway's indicia of identity to
 8 be used, much less used to sell its products or services, if no one has actually searched for
 9 Ridgeway's profile, and therefore his teaser report has never been generated nor seen by anyone.

10 The Court finds the Supreme Court's analysis in *TransUnion* particularly instructive. In
 11 *TransUnion*, a class of plaintiffs sued a credit reporting agency for violating the provisions of the
 12 Fair Credit Reporting Act concerning accuracy of credit files. 141 S. Ct. at 2200. While it was
 13 undisputed that every plaintiff's credit file indeed had misleading information, it was also undisputed
 14 that only some of the plaintiffs had their credit files disclosed to third parties. 141 S. Ct. at 2197. As
 15 the Supreme Court explained, "the mere presence" of misleading information, "if it is not disclosed
 16 to a third party, causes no concrete harm." *Id.* at 2210. Similarly, the mere presence of misleading
 17 information without disclosure caused no sufficient risk of future harm and they did not show any
 18 harm from being exposed to the risk (such as emotional injury from the mere risk that their
 19 information might be provided to others). *Id.* at 2211. In fact, any risk of future harm was
 20 speculative in light of the failure to demonstrate the likelihood of disclosure or even that they even
 21 knew the misleading information was in their files. *Id.* at 2212 (noting that for this class of plaintiffs,
 22 "the risk of dissemination to third parties [is] too speculative to support Article III standing").
 23 Accordingly, those plaintiffs who could not show that their inaccurate credit files had been disclosed
 24 to any third party did not have standing. *Id.* at 2209–13. Ridgeway's purported harm is akin to that
 25 of the plaintiffs in *TransUnion* for whom standing was found wanting.

27 ⁵ The Court acknowledges that there are screenshots of Ridgeway's profile in the Complaint, but there are no
 28 allegations that these screenshots came from someone other than Ridgeway himself or his counsel. See
 Compl. ¶¶ 28, 32, 34.

1 The *TransUnion* plaintiffs also brought a claim that certain mailings to the plaintiffs were
 2 formatted incorrectly, but again, the Supreme Court found that “[w]ithout any evidence of *harm*
 3 caused by the format of the mailings, these are ‘*bare procedural violation[s]*, divorced from any
 4 concrete harm’” which was insufficient for standing. *Id.* at 2213 (emphasis added). Similarly,
 5 Ridgeway has not pointed to any concrete harm or a sufficiently significant risk of future harm
 6 beyond the alleged procedural violation.

7 And, finally, the Court does not find—as it must—that the mere availability or accessibility
 8 of Ridgeway’s teaser report is a harm closely related to any right protected by common law. *See*
 9 *TransUnion LLC*, 141 S. Ct. at 2211 (holding that “mere risk of future harm, standing alone, cannot
 10 qualify as a concrete harm—at least unless the exposure to the risk of future harm itself causes a
 11 *separate* concrete harm”). Although Ridgeway argues that AROPA has codified the “common law
 12 tort of misappropriation,” and that “violations of AROPA simply do not require” actual disclosure to
 13 anyone, importantly, he fails to demonstrate that the common law tort of misappropriation would not
 14 require some sort of *disclosure* to show either use or harm.⁶ Opp at. 7; *see Slivinsky v. Watkins-*
 15 *Johnson Co.*, 221 Cal. App. 3d 799, 807 (“*Resulting* injury is the sine qua non of a cause of action
 16 for misappropriation of name.”) (emphasis added).

17 For these reasons, the Court finds that Ridgeway’s Complaint must be dismissed because he
 18 fails to establish standing.⁷ Nevertheless, because the Court finds that it may be possible for
 19 Ridgeway to cure this deficiency, Spokeo’s Motion is GRANTED WITH LEAVE TO AMEND.

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 21 ⁶ The Court notes that *In re Facebook*, 956 F.3d 589, 599 (9th Cir. 2020) makes clear that ““state law can
 22 create interests that support standing in federal courts.”” (quoting *Cantrell v. City of Long Beach*, 241 F.3d
 23 674, 684 (9th Cir. 2001)). The Ninth Circuit therefore undertook this same analysis when analyzing California
 24 causes of action. *In re Facebook*, 956 F.3d at 598 (“As to the statutory claims, the legislative history and
 statutory text demonstrate that Congress and the California legislature intended to protect these historical
 privacy rights when they passed the Wiretap Act, SCA, and CIPA.”).

25 ⁷ Ridgeway relies heavily on non-binding authority in *Kellman v. Spokeo* throughout his opposition, but there,
 26 the adequacy of allegations supporting that the plaintiffs’ profiles had actually been searched were not at
 issue. 599 F. Supp. 3d 877 (N.D. Cal. 2022). As *Kellman* never considered standing on the lack of an alleged
 injury altogether, the case is distinguishable.

27 The Court also notes that after the hearing, the 9th Circuit issued a decision in *Martinez v. ZoomInfo*
 28 *Technologies, Inc.*, 2023 WL 6153577, ___F.4th___ (9th Cir. 2023), which affirmed a district court’s denial of

1 **C. Ridgeway Has Not Satisfied the Requirements of CAFA**

2 In addition, and as a further basis for granting the Motion in light of the Court's ruling on
 3 standing, the Court finds that it lacks subject matter jurisdiction because the allegations as pleaded in
 4 the Complaint are insufficient to satisfy CAFA requirements.

5 Under CAFA, there must be at least 100 putative class members and more than \$5 million in
 6 controversy for this Court to have original jurisdiction. 28 U.S.C. §§ 1332(d)(2) & (d)(5)(b). Here,
 7 Ridgeway seeks \$5,000 per violation of AROPA, so presumably the class needs more than 1,000
 8 individuals to satisfy the amount in controversy requirement. *See Compl. ¶ 76(f).* Although the
 9 Complaint purports to include in its putative class “All Alabama residents whose indicia of identity
 10 was published by Spokeo without their consent,” the Court cannot draw a reasonable inference of
 11 how many Alabama residents are included in this class definition. Compl. ¶ 53. While Ridgeway
 12 points to its allegations that Spokeo offers full reports on “millions of individuals,” it is not clear
 13 how many of them are from Alabama, nor how many individuals have their information “used” in
 14 violation of AROPA. Compl. ¶ 9. More significantly, the Court has determined that not all of these
 15 individuals would have standing—for the reasons discussed above, only individuals whose profiles
 16 were searched for or viewed would have standing, which may significantly narrow the class. While
 17 Ridgeway’s proposed amendments—regarding the number of class members and the amount of
 18 damages—would not cure the standing issue problem identified above, the Court nevertheless finds
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22 an anti-SLAPP motion to strike on a complaint that brought causes of action related to California’s right of
 23 publicity statute on a website that similarly creates teaser reports off users. The Ninth Circuit in *Martinez* held
 24 that the plaintiff there had “plausibly pleaded that she suffered sufficient injury to establish standing to sue”
 25 such that the court could consider the appeal. *Id.* at *4. Although the Ninth Circuit did not identify what was
 26 significant to its standing analysis in the decision, the complaint in *Martinez* contained allegations that the
 27 plaintiff suffered mental injury and disturbance in her peace of mind, which is not alleged here. Complaint at
 28 ¶44, *Martinez v. ZoomInfo Technologies, Inc.*, Case No. 3:21-cv-05725-MJP (W.D. Wash. Sept. 30, 2021),
 ECF No. 1. (These allegations—and the fact that the district court found that the requisite allegations of third-
 party viewership *were* made—also distinguish Plaintiff’s Supplemental Authority, ECF No. 38, *Nolen v.
 PeopleConnect, Inc.*, Case No. 20-cv-09203-EMC (N.D. Cal. June 30, 2023), from the current case.)
 Moreover, the threshold issue of whether the defendant’s actions specifically as to the teaser report could
 constitute a “use” was apparently not argued in *Martinez*. Order on Motion to Dismiss at 7-10, *Martinez v.
 ZoomInfo Technologies, Inc.*, Case No. 3:21-cv-05725-MJP (W.D. Wash. Apr. 11, 2022), ECF No. 39.

1 that Ridgeway could potentially add allegations addressing the number of individuals whose profiles
2 were searched and viewed and thereby meet the requirements of CAFA.

3 Accordingly, the Complaint is DISMISSED on this ground WITH LEAVE TO AMEND.

4 **D. The Remaining Arguments are Moot**

5 Because the Court finds that Ridgeway must plead that someone actually searched for and
6 viewed his teaser report in order to establish standing and demonstrate subject matter jurisdiction,
7 the Court need not reach Spokeo's other asserted bases for dismissing Ridgeway's Complaint.

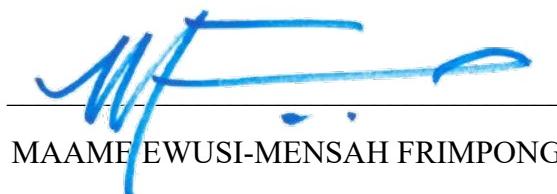
8 **IV. Conclusion**

9 For the foregoing reasons, the Court hereby ORDERS as follows:

- 10 1. Spokeo's Motion to Dismiss is GRANTED WITH LEAVE TO AMEND; and
11 2. If Ridgeway wishes to amend his Complaint to address the deficiencies identified, he is
12 ORDERED to do so within 30 days from the date of this Order.

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14 IT IS SO ORDERED.

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16 Dated: October 11, 2023



17 MAAME EWUSI-MENSAH FRIMPONG
18 United States District Judge

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